

Tuesday, December 12, 2006

The Board met at its offices at 450 N Street, Sacramento, at 9:48 a.m., with Mr. Chiang, Chair, Mr. Parrish, Vice Chair, Ms. Yee and Mr. Leonard present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Mark S. Collins and Marcia L. Collins, 312870

1998, \$68,805.00 Assessment

1999, \$16,099.00 Assessment

For Appellant:

Mark S. Collins, Taxpayer

Dean R. Westly, Attorney

For Franchise Tax Board:

Christopher Parker, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution was disclosed to Mr. Westly. No other disqualifying contributions were disclosed.

Issues: When did the theft loss claimed by appellants occur?

What is the proper theft loss amount?

Appellant's Exhibit: Miscellaneous Documents (Exhibit 12.1)

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel absent, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

Ronald Tomsic, 294757

1998, \$13,934.00 Claim for Refund, \$5,968.00 Interest

1999, \$31,273.00 Claim for Refund, \$10,156.00 Interest

2000, \$194,271.00 Claim for Refund, \$42,656.00 Interest

2001, \$22,975.00 Claim for Refund, \$2,781.00 Interest

2002, \$22,957.00 Claim for Refund, \$1,231.00 Interest

Bernard A. Reiling and Judith Reiling, 294780

1999, \$157,837.00 Claim for Refund, \$51,276.00 Interest

2001, \$193,172.00 Claim for Refund, \$23,371.00 Interest

2002, \$16,592.00 Claim for Refund, \$896.00 Interest

Sanford Kopelow and Marlene Kopelow, 295580

1999, \$56,471.00 Claim for Refund, \$18,345.00

Steven C. Walker and Lissa Jean Walker, 301166

2001, \$20,948 Claim for Refund

For Appellant:

Robert S. Horwitz, Attorney

Christopher Micheli, Attorney

Rex Halverson, Attorney

Steven Walker, CPA

For Franchise Tax Board:

David Gemmingen, Tax Counsel

Bill Hilson, Tax Counsel

Edwin P. Chase, CMA

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Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Issue: Whether appellants were engaged in an abusive tax shelter such that respondent properly disallowed deductions attributable to certain commercial real property.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 12.2)

Respondent's Exhibit: Miscellaneous Documents (Exhibit 12.3)

Action: Upon motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board deferred this matter to the March Sacramento meeting as requested by all parties.

SALES AND USE TAX APPEALS HEARINGS

James W. McKenney, 283203 (KHO)

7-1-00 to 12-31-03, \$2,081.71 Tax, \$322.10 Penalty

For Petitioner: James W. McKenney, Taxpayer

For Sales and Use Tax Department: Carla Caruso, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has established that disallowed claimed sales for resale were in fact sales for resale.

Whether petition was negligent.

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Fireside-Corkwood, Inc., 252969 (KH)

1-1-00 to 12-1-02, \$17,763.15 Tax, \$1,824.86 Penalty

For Petitioner: Robert S. Jouganatos, Taxpayer

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the evidence warrants further adjustments to the audited amount of taxable sales.

Whether the negligence penalty is warranted.

Whether relief from the amnesty interest penalty should be granted.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Shannon McKelvey and Clarence McKelvey, 242685 (KH)

1-1-00 to 12-31-02, \$23,978.35 Tax

For Petitioner: Clarence McKelvey, Taxpayer

Shannon McKelvey, Taxpayer

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the audited understatement of reported taxable sales is excessive.

Whether relief from the amnesty interest penalty should be granted.

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Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matters: *United Parcel Service, Inc.*, 98724, 126831, 131381, 153034, 192709, 242411; *United Parcel Service, Inc.*, 98726, 131383, 131431, 153036, 207917, 242304; and, *United Parcel Service, Inc.*, 272826.

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Mr. Parrish, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

United Parcel Service, Inc., 98724, 126831, 131381, 153034, 192709, 242411 (OH)
United Parcel Service, Inc., 98726, 131383, 131431, 153036, 207917, 242304 (EAA)
United Parcel Service, Inc., 272826 (CH)
10-1-97 to 6-30-03, \$5,308,711.00 Claim for Refund
Action: The Board took no action.

Milton McKenzie Investment Corporation, 129605, 138569 (BH)
4-1-98 to 12-31-00 Audit Period
4-1-98 to 9-30-00 Claim Period
Action: Redetermine as recommended by the Appeals Division.

Aziz A. Zora and Ramzi M. Hanna, 362974 (ET)
June 1, 2006, \$3,119.00 Approximate Value
Action: Determined that staff properly seized the tobacco products.

Roy Ngo and Tan Thanh Ngo, 374010 (ET)
July 24, 2006, \$719.00 Approximate Value
Action: Determined that staff properly seized the tobacco products.

Nune Tolmajyan, 374012 (ET)
July 5, 2006, \$400.00 Approximate Value
Action: Determined that staff properly seized the tobacco products.

Mohammad Z. Homayun, 372185 (ET)
June 17, 2006, \$1,297.00 Approximate Value
Action: Determined that staff properly seized the tobacco products.

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CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matters: *Billy W. Blanks and Gayle H. Blanks, 268581; BG Star Productions, Inc., 268579; and, Kenneth A. Sauer and Eliza B. Sauer, 308089.*

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Mr. Parrish, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

Alfred J. Antonini, 283987

2001, \$22,042.00 Assessment, \$5,510.50 Late Filing Penalty, \$5,510.50 Notice and Demand Penalty, \$108.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board.

Ledle Arreola, 332699

2001, \$941.20 Assessment

2003, \$1,089.88 Assessment

Action: Dismissed due to lack of Jurisdiction.

Richard Brown and Louise Brown, 348733

2002, \$1,310.34 Assessment

Action: Sustain the action of the Franchise Tax Board.

Jose De Jesus Cervantes, 332852

2004, \$271.55 Assessment

Action: Dismissed due to lack of Jurisdiction.

Christine Chiang, 332393

2003, \$1,338.29 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Elizabeth Cortez, 333187

2004, \$895.10 Assessment

Action: Dismissed due to lack of Jurisdiction.

Leopoldo D. Cotaco, 330272

2002, \$430.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Susan Douglas, 342131

2004, \$859.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Marc Goudeau, 304303

2000, \$3,414.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Carlos Longoria, 339839

1982, \$408.00 Claim for refund

Action: Sustain the action of the Franchise Tax Board.

David R. Mallegg, 343154

2003, \$8,152.00 Tax, \$5,369.50 Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Micro Devices Technology, Inc., 315475

2000, \$30,359.31 Assessment

Action: Sustain the action of the Franchise Tax Board.

Conrad J. Mondon, 314845

2001, \$499.05 Assessment

Action: Sustain the action of the Franchise Tax Board.

Abundio Montoya, 333219

2000, \$606.21 Assessment

2001, \$540.12 Assessment

2002, \$441.84 Assessment

2003, \$401.90 Assessment

Action: Dismissed due to lack of Jurisdiction.

Walter O. Munoz, 333235

2003, \$544.38 Assessment

Action: Dismissed due to lack of Jurisdiction.

Samuel E. Portillo, 333493

2004, \$894.23 Assessment

Action: Dismissed due to lack of Jurisdiction.

Nolberto Torres Rogel, 337088

2004, \$793.24 Assessment

Action: Dismissed due to lack of Jurisdiction.

Luis Rodriguez, 342408

2003, \$820.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Isaias Valdez Soto, 333214

2004, \$1,074.82 Assessment

Action: Dismissed due to lack of Jurisdiction.

Howard James Stockwell, 310307

1991, \$9,380.00 Tax, \$1,876.00 Accuracy Penalty

1992, \$18,853.00 Tax, \$3,770.60 Accuracy Penalty

1993, \$7,987.00 Tax, \$1,597.40 Accuracy Penalty

1994, \$888.00 Tax, \$177.60 Accuracy Penalty

1995, \$1,192.00 Tax, \$238.40 Accuracy Penalty

1996, \$669.00 Tax, \$233.80 Accuracy Penalty

Action: Sustain the action with concession by the Franchise Tax Board.

Darrel Alan Travis, 339857

2003, \$352.50 Assessment

Action: Sustain the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

Juana Maravilla Villalobos, 336710

2003, \$1,015.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Joseph Zelman, 332675

2004, \$664.68 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Billy W. Blanks and Gayle H. Blanks, 268581

1998, \$663,038.00 Assessment

1999, \$987,125.00 Assessment

BG Star Productions, Inc., 268579

1998, \$112,394.00 Assessment

1999, \$62,250.00 Assessment

Action: The Board took no action.

David C. Claunch, 281451

1999, \$10,888.00 Assessment, \$2,722.00 Penalty

Action: Deny the petition for rehearing.

Howard L. Greenblatt and Debra D. Greenblatt, 303631

1998, \$4,269.00 Assessment

1999, \$30,892.25 Assessment

2000, \$3,577.00 Assessment

2001, \$11,828.00 Assessment

Action: Deny the petition for rehearing.

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Michael E. Hodsdon, 305183

2001, \$1,859.00 Tax, \$464.75 Penalties

Action: Deny the petition for rehearing.

Allen Nichelini, 311076

1998, \$6,571.00 Claim for Refund

Action: Deny the petition for rehearing.

Steven R. Nicholas, 306724

2001, \$4,165.00 Tax, \$2,190.50 Penalties and Fees

Action: Deny the petition for rehearing.

Alfred R. Penn, 315199

1993, \$1,721.44 Claim for Refund

Action: Deny the petition for rehearing.

Lori Pridemore, 315439

1997, \$7,466.88 Claim for Refund

1998, \$50,879.30 Claim for Refund

1999, \$668.89 Claim for Refund

Action: Deny the petition for rehearing.

Kenneth A. Sauer and Eliza B. Sauer, 308089

1999, \$2,207.00 Tax, \$451.73 Penalty

Action: The Board took no action.

J. Ricardo Sobrevilla and Enedelia Sobrevilla, 310301

1986, \$292.28 Accrued Interest

Action: Deny the petition for rehearing.

Melvin A. Vides, 310520

2003, \$1,222.00 Assessment

Action: Deny the petition for rehearing.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

Armita Agagulyan, 335930

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

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Jeff Alan Ashe, 347701

2005, \$350.00

Action: Sustain the action of the Franchise Tax Board.

Loreta R. Aylor, 339844

2005, \$347.00

Action: Sustain the action of the Franchise Tax Board.

Violet M. Bates, 339315

2005, \$1.00 or more

Action: Reverse the action of the Franchise Tax Board.

Luis Castellanos, 340531

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Mary Cook, 334700

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Dorothy Cowling, 330229

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Toni A. Daniels, 340530

2005, \$300.00

Action: Sustain the action of the Franchise Tax Board.

Jean Day, 348949

2005, \$327.50

Action: Sustain the action of the Franchise Tax Board.

Donna Defrancesco, 336608

2005, \$347.58

Action: Sustain the action of the Franchise Tax Board.

Katharine Djerahian, 330506

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Stacy Fields, 335918

2005, \$400.50

Action: Sustain the action of the Franchise Tax Board.

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Sherian A. Gibson, 330650

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Wayne Halberg, 335892

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Terry Lee Holloway, 347347

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Nancy Barbara Leon, 339308

2004, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Ora Lee Littlejohn, 335141

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Delia Masse, 339330

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Tyiest Mayo, 335271

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Steven L. Meldgin, 341156

2004, \$347.50

Action: Sustain the action of the Franchise Tax Board.

G. A. Nadjmabadi, 340608

2003, \$347.50

2004, \$340.00

Action: Reverse the action of the Franchise Tax Board.

Arthur M. Pride, 348142

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Diane Ranta, 339332

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

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John Williams, Jr., 345769

2005, \$192.00

Action: Sustain the action of the Franchise Tax Board.

Douglas Wright, 345389

2005, \$235.00 or more

Action: Sustain the action of the Franchise Tax Board.

SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES AND DENIALS OF CLAIMS FOR REFUND, CONSENT

The Board deferred consideration of the following matter: *Edwin M. Culver, 350298 (GHC)*.

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang and Ms. Mandel not participating in accordance with Government Code section 87105 in *Best Buy Store L P, 359815*, the Board made the following orders:

Comexi North America, Inc., 318328 (OHA)

10-1-95 to 6-30-04, \$722,042.43

Action: Approve the redetermination as recommended by staff.

United Rentals Northwest, Inc., 373684 (OHB)

4-1-05 to 7-31-05, \$342,836.28

Action: Approve the relief of penalty as recommended by staff.

ADT Security Services, Inc., 372814 (OHC)

7-1-05 to 9-30-05, \$60,865.10

Action: Approve the relief of penalty as recommended by staff.

Edwin M. Culver, 350298 (GHC)

1-1-03 to 3-31-06, \$135,434.00

Action: The Board took no action.

Citicapital Commercial Leasing, 203723 (OHC)

10-1-99 to 6-30-00, \$65,608.12

Action: Approve the denial of claim for refund as recommended by staff.

Best Buy Store L P, 359815 (OHA)

10-1-97 to 9-30-00, \$76,468.06

Action: Approve the denial of claim for refund as recommended by staff. Mr. Chiang and Ms. Mandel not participating in accordance with Government Code section 87105.

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Union Acceptance Corporation, 372477 (OHA)

1-1-03 to 12-31-05, \$87,431.77

Action: Approve the denial of claim for refund as recommended by staff.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

The Board deferred consideration of the following matters: *Cirilo Montes, 361150 (EH)*; and, *Kawasaki Motors Corporation USA, 353580 (EAA)*.

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Parrish, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating in accordance with Government Code section 87105 in *Cig Financial, 360922*; Ms. Mandel not participating in accordance with Government Code section 87105 in *Daimler Chrysler Corporation, 373562*; the Board made the following orders:

Cirilo Montes, 361150 (EH)

6-1-02 to 9-30-03, \$94,304.72

Action: The Board took no action.

Mark Finkle, 375200 (CH)

1-1-96 to 12-31-98, \$90,356.43

Action: Approve the credit and cancellation as recommended by staff.

Universal City Studios, Inc., 363127 (AC)

7-1-96 to 6-30-02, \$777,816.86

Action: Approve the refund as recommended by staff.

Kawasaki Motors Corporation USA, 353580 (EAA)

4-1-02 to 3-3-05, \$290,894.67

Action: The Board took no action.

Harris Corporation, 315297 (OHA)

1-1-00 to 12-31-02, \$656,612.97

Action: Approve the refund as recommended by staff.

Cisco Systems, Inc., 332303 (GH)

4-1-00 to 12-31-02, \$9,414,395.61

Action: Approve the refund as recommended by staff.

The Bottarini Corporation, 372167 (BH)

4-1-06 to 8-13-06, \$59,556.38

Action: Approve the refund as recommended by staff.

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Thoratec Laboratories Corporation, 372819 (CH)

1-1-02 to 12-31-04, \$779,846.04

Action: Approve the refund as recommended by staff.

Sybase, Inc., 354959 (CH)

7-1-00 to 6-30-04, \$75,123.94

Action: Approve the refund as recommended by staff.

Solar Turbines, Inc., 314865 (FH)

1-1-01 to 12-31-03, \$384,202.22

Action: Approve the refund as recommended by staff.

Cubic Defense Systems, Inc., 375114 (FH)

1-1-00 to 12-31-02, \$112,038.18

Action: Approve the refund as recommended by staff.

Ecolab, Inc., 336747 (OHA)

1-1-01 to 12-31-03, \$172,224.76

Action: Approve the refund as recommended by staff.

KHS, A Division of Klochner KHS, 350938 (OHA)

10-1-05 to 12-31-05, \$71,367.33

Action: Approve the refund as recommended by staff.

Chevrolet Motor Division, 374009 (OHA)

1-17-06 to 6-16-06, \$884,732.84

Action: Approve the refund as recommended by staff.

Daimler Chrysler Corporation, 373562 (CHA)

3-31-06 to 6-16-06, \$251,570.00

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Fluoresco Lighting-Sign Maint. Corporation, 304351 (OH)

4-1-03 to 12-31-04, \$73,823.59

Action: Approve the refund as recommended by staff.

Bevco Sales International, Inc., 348914 (OH)

10-1-03 to 12-31-03, \$52,777.16

Action: Approve the refund as recommended by staff.

Make-Up Art Cosmetics, Inc., 312963 (OHB)

4-1-98 to 6-30-01, \$62,320.21

Action: Approve the refund as recommended by staff.

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Lu Mend, Inc., 335893 (BH)

1-1-04 to 6-30-05, \$98,260.19

Action: Approve the refund as recommended by staff.

Waseem Ahmed, 331483 (KHO)

4-1-02 to 3-31-05, \$74,574.05

Action: Approve the refund as recommended by staff.

Hat Trick Catering, Inc., 339165 (AC)

1-1-05 to 9-30-05, \$79,564.03

Action: Approve the refund as recommended by staff.

Hollywood Rental Production Service, LLC, 375119 (AC)

7-1-01 to 6-30-04, \$105,537.05

Action: Approve the refund as recommended by staff.

Ubiquitel Operating Company, 374036 (OHB)

4-1-01 to 9-30-05, \$111,562.69

Action: Approve the refund as recommended by staff.

See's Candy Shops, Inc., 352040 (BH)

1-1-03 to 9-30-05, \$103,245.07

Action: Approve the refund as recommended by staff.

See's Candies, Inc., 352042 (BH)

1-1-03 to 9-30-05, \$50,491.28

Action: Approve the refund as recommended by staff.

Wescom Credit Union, 311038 (AP)

10-1-02 to 12-31-05, \$418,333.20

Action: Approve the refund as recommended by staff.

Use Credit Union, 362184 (FH)

4-1-05 to 3-31-06, \$77,807.34

Action: Approve the refund as recommended by staff.

USA Federal Credit Union, 372824 (FH)

1-1-03 to 12-31-05, \$105,273.13

Action: Approve the refund as recommended by staff.

Famous Design, 288959 (AS)

9-1-02 to 9-30-04, \$59,029.58

Action: Approve the refund as recommended by staff.

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Top Auto Finance, Inc., 362313 (AC)

7-1-05 to 12-31-05, \$97,337.14

Action: Approve the refund as recommended by staff.

Union Acceptance Corporation, 341198 (OHA)

1-1-03 to 12-31-05, \$496,627.87

Action: Approve the refund as recommended by staff.

Optimum Group, LLC, 334149 (OHA)

1-1-04 to 3-31-05, \$134,505.28

Action: Approve the refund as recommended by staff.

Target Therapeutics, Inc., 328899 (CH)

4-1-03 to 6-30-05, \$74,268.92

Action: Approve the refund as recommended by staff.

A – L Financial Corporation, 372011 (EA)

4-1-06 to 6-30-06, \$114,781.70

Action: Approve the refund as recommended by staff.

Cig Financial, 360922 (EAA)

7-1-05 to 3-31-06, \$169,378.05

Action: Approve the refund as recommended by staff. Mr. Chiang not participating in accordance with Government Code section 87105.

Star Bright Furniture, Inc., 372823 (ARH)

4-1-04 to 7-17-06, \$57,014.46

Action: Approve the refund as recommended by staff.

BWNVT Motors, Inc., 345177 (EAA)

10-1-05 to 12-31-05, \$117,505.76

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, REDETERMINATIONS AND RELIEF OF PENALTIES, CONSENT

With respect to the Special Taxes Matters, Redeterminations and Relief of Penalties, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Pacificare Life & Health Insurance Company*, 298643; and, *Jefferson National Life, Insurance Company*, 355592; the Board made the following orders:

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PacifiCare Life & Health Insurance Company, 298643 (ET)

10-1-04 to 12-31-04, \$128,826.01

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Jefferson National Life, Insurance Company, 355592 (ET)

1-1-05 to 3-31-06, \$74,276.80

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Karl Kolpin, 192596 (ET)

8-1-99 to 9-30-01, \$51,663.27

Action: Approve the redetermination as recommended by staff.

SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Diageo North America, Inc.*, 355593; the Board made the following orders:

Agracon, Inc., 376813 (MT)

1-1-97 to 12-31-03, \$64,959.85

Action: Approve the credit and cancellation as recommended by staff.

McLane/Suneast, Inc., 374158 (ET)

9-1-06 to 9-30-06, \$65,307.30

Action: Approve the refund as recommended by staff.

Diageo North America, Inc., 355593 (ET)

3-1-06 to 3-31-06, \$157,620.16

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

LEGAL APPEALS MATTERS, ADJUDICATORY

Michael P. Keegan, 254502 (EA)

4-1-03 to 6-30-03, \$350,848.00 Tax

Considered by the Board: September 13, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and duly carried, Mr. Chiang, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Ms. Yee voting no, the Board ordered that the petition be granted as recommended by the Appeals Division.

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Frederik Van Rooyen, 255046, 309259 (EA)

4-1-03 to 6-30-03, \$350,848.00 Tax

11-2-02 to 12-31-02, \$25,556.00 Tax, \$2,555.60 Penalty

Considered by the Board: November 20, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and duly carried, Mr. Chiang, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Ms. Yee voting no, the Board ordered that the petition be granted as recommended by the Appeals Division.

Brian Jerome Doherty, 236451 (UT)

John Peter Mouyos, 239662 (EH)

August 29, 1999, \$748.65 Tax

Considered by the Board: August 16, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Qwest Communications, Corporation, 246379 (ET)

10-1-98 to 10-31-03, \$374,573.98 Surcharge

Considered by the Board: August 29, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Mr. Parrish moved that the petition be granted. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Yee and Ms. Mandel voting no, Mr. Chiang not participating.

Upon motion of Mr. Parrish, seconded by Ms. Yee and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

R.E.M. Concepts, Inc., 332323 (EH)

7-1-00 to 1-5-04, \$3,822,110.55 Tax

Considered by the Board: November 20, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Mr. Parrish moved that the petition be granted. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Chiang, Ms. Yee and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Tuesday, December 12, 2006

California Automobile Insurance Company, 127684, 139404

1-1-98 to 12-31-99, \$87,217.62 Tax

1-1-00 to 12-31-00, \$76,911.00 Tax

Considered by the Board: July 18, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and duly carried, Mr. Chiang, Ms. Yee and Mr. Leonard voting yes, Mr. Parrish voting no, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

Deluxe Corporation, 297128

1997, \$104,896.00 Claim for Refund

1998, \$238,471.00 Claim for Refund

1999, \$254,320.00 Claim for Refund

2000, \$206,177.00 Claim for Refund

2001, \$175,877.00 Claim for Refund

Considered by the Board: Formal Opinion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Ms. Mandel moved to adopt the Formal Opinion Alternative 2 with changes and to sustain the action of the Franchise Tax Board as to the remaining 43 disputed claims for refund. The motion was seconded by Ms. Yee. Mr. Parrish made a substitute motion to adopt Alternative 1, but no vote was taken. Ms. Yee withdrew her second on the original motion.

Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Mr. Chiang, Ms. Yee and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board adopted a formal opinion.

Ms. Mandel moved to sustain the action of the Franchise Tax Board as to the remaining 43 disputed claims for refund, but no vote was taken. Mr. Parrish made a substitute motion to reverse the action of the Franchise Tax Board as to the remaining 43 disputed claims for refunds. The substitute motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang, Ms. Yee and Ms. Mandel voting no.

Ms. Mandel moved to sustain the action of the Franchise Tax Board as to the remaining 43 disputed claims for refund. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Ms. Mandel voting yes, Mr. Chiang, Mr. Parrish and Mr. Leonard voting no.

Upon motion of Mr. Parrish, seconded by Mr. Leonard and duly carried, Mr. Chiang, Mr. Parrish and Mr. Leonard voting yes, Ms. Yee and Ms. Mandel voting no, the Board adopted a decision reversing the action of the Franchise Tax Board as to 15 vouchers (veterans 2, long-term unemployed 10, terminated or laid off 2 and disabled 1) as recommended by the Appeals Division.

Mr. Parrish made a motion to reverse the action of the Franchise Tax Board as to the remaining 28 vouchers. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang, Ms. Yee and Ms. Mandel voting no.

Tuesday, December 12, 2006

Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Mr. Chiang, Ms. Yee and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board adopted a decision sustaining the action of the Franchise Tax Board as to the remaining 28 vouchers.

Mark Crumpacker, 313396

2002, \$5,417.50 Assessment

Considered by the Board: March 28, 2006

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Lisa M. Fagundes, 317594

2003, \$1,175.00 Tax, \$293.75 Penalty

Considered by the Board: September 27, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: The Board deferred consideration of this matter.

G.M.S., 221190

1995, \$169,013.00 Assessment

1996, \$183,010.00 Assessment

John Marshall, 216967

1995, \$68,003.00 Assessment

1996, \$64,786.00 Assessment

Considered by the Board: November 20, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted a decision modifying the action of the Franchise Tax Board.

Joseph Melendez and Rosemary Persico, 330293

1996, \$1,457.83 Tax, \$649.25 Penalty and Fees

Considered by the Board: September 27, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Manuel Mireles and Rosa Mireles, 304422

1998, \$26,619.00 Assessment

Considered by the Board: March 28, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Tuesday, December 12, 2006

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted a decision modifying the action of the Franchise Tax Board.

John J. Roppo, 311951

2001, \$11,572.25 Claim for Refund

Considered by the Board: March 28, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Peter M. Soley, 310303

1985, \$266.91 Interest

Considered by the Board: August 29, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted a decision reversing the action of the Franchise Tax Board.

Argonaut Group, Inc., 287738

1994, \$52,199.00 Claim of Refund

1995, \$690,951.00 Claim of Refund

1996, \$16,265.00 Claim of Refund

1997, \$884,165.00 Claim of Refund

1998, \$414,238.00 Claim of Refund

1999, \$1,311,083.00 Claim of Refund

Considered by the Board: June 27, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: The Board deferred consideration of this matter.

Patricia Tyler-Griffis, 281239

1984, \$78,880.00

Considered by the Board: Formal Opinion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted a formal opinion sustaining the action of the Franchise Tax Board.

Angelina Mike and the Estate of Jorge G. Nunez, 262040

2000, \$31,856.00 Claim for Refund

Considered by the Board: September 12, 2006

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Tuesday, December 12, 2006

Action: Mr. Parrish made a motion to reverse the action of the Franchise Tax Board. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang and Ms. Yee voting no, Ms. Mandel not participating.

The Board deferred consideration of this matter to a later date.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, ADJUDICATORY

Henderson Wallace Calloway, 332647

2005, \$1.00 or more

Considered by the Board: September 27, 2006

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES AND DENIALS OF CLAIMS FOR REFUND, ADJUDICATORY

Bericap, LLC, 294804 (EH)

5-1-02 to 6-30-04, \$113,924.08

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: The Board deferred consideration of this matter.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, ADJUDICATORY

Kathleen M. Frawley, 379431 (AP)

1-1-95 to 12-31-99, \$57,784.73

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure form filed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish not participating, the Board approved the credit and cancellation as recommended by staff.

Dowd & Guild, Inc., 348911 (CH)

4-1-03 to 12-31-05, \$87,125.52

Considered by the Board: September 27, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish not participating, the Board approved the refund as recommended by staff.

Tuesday, December 12, 2006

Allergan Sales, Inc., 357255 (EAA)

4-1-01 to 5-31-02, \$112,584.81

Considered by the Board: September 12, 2006

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution was disclosed to Ms. Yee. No other disqualifying contributions were disclosed.

Action: The Board deferred consideration of this matter for lack of quorum.

Husky Injection Molding Systems, Inc., 346221 (OHB)

1-1-02 to 3-31-03, \$77,446.15

Considered by the Board: September 12, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: The Board deferred consideration of this matter.

Merillat Corporation, 357435 (OHA)

1-1-02 to 12-31-05, \$83,049.71

Considered by the Board: September 27, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish not participating, the Board approved the refund as recommended by staff.

Allergan Sales, LLC, 356791 (EAA)

4-1-04 to 12-31-05, \$79,292.38

Considered by the Board: September 12, 2006

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution was disclosed to Ms. Yee. No other disqualifying contributions were disclosed.

Action: The Board deferred consideration of this matter for lack of quorum.

Allergan Sales, LLC, 357254 (EAA)

6-1-02 to 3-31-04, \$241,193.89

Considered by the Board: September 12, 2006

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution was disclosed to Ms. Yee. No other disqualifying contributions were disclosed.

Action: The Board deferred consideration of this matter for lack of quorum.

Long Beach Acceptance Corporation, 198737 (EA)

7-1-99 to 12-31-03, \$2,145,936.15

Considered by the Board: September 12, 2006

Contribution Disclosures pursuant to Government Code section 15626: Disqualifying contributions were disclosed to Ms. Yee and Mr. Leonard. No other disqualifying contributions were disclosed.

Action: The Board deferred consideration of this matter for lack of quorum.

Tuesday, December 12, 2006

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES
HEARING HELD DECEMBER 12, 2006**

Mark S. Collins and Marcia L. Collins, 312870

Final Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, and Mr. Leonard voting yes, Ms. Mandel not participating, Mr. Parrish absent, the Board sustained the action of the Franchise Tax Board.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD DECEMBER
12, 2006**

James W. McKenney, 283203 (KHO)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Fireside-Corkwood, Inc., 252969 (KH)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

SALES AND USE TAX APPEALS HEARINGS

P J Helicopters, Inc., 224188 (UT)

February 28, 2001, \$29,750.00 Tax

For Petitioner:

Appearance Waived

For Sales and Use Tax Department:

Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner's use of the aircraft in issue was exempt from use tax because the aircraft was principally used in common carriage operations.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

The Board recessed at 12:10 p.m. and reconvened at 1:35 p.m. with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

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SALES AND USE TAX APPEALS HEARINGS

Auto World, Inc., 285803 (KH)

1-1-01 to 12-31-03, \$10,020.71 Tax

For Petitioner:

Mohsen Vaghefi, Taxpayer
Ken Kinyon, Representative
Dave Kinyon, Witness
Ron Courter, Witness
Lori Carpenter, Witness

For Sales and Use Tax Department:

Robert Tucker, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has established that the disallowed claimed nontaxable sales were in fact nontaxable.

Whether petitioner has established that it is entitled to relief based upon its reliance on alleged erroneous advice.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Binding Systems of California, Inc., 260936 (CH)

1-1-00 to 12-31-02, \$56,843.52 Tax

For Petitioner:

Valerie Guild, Taxpayer

For Sales and Use Tax Department:

Robert Stipe, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has established that any adjustments are warranted to the taxable measure of petitioner's combined charge for editing and binding legal documents.

Whether petitioner is entitled to relief from the liability because the Department allegedly provide inaccurate oral advice as to how tax applied to its charges for editing, tabbing, and binding of documents.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Effective Engineering, Inc., 143932 (AC)

4-1-97 to 3-31-01, \$74,431.62 Tax, \$8,054.04 Penalty

For Petitioner:

Grant Knox, Taxpayer
Alan Kazden, CPA

For Sales and Use Tax Department:

Bradley Heller, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the audit overstates the cost of parts consumed in optional maintenance contracts.

Whether petitioner's gross receipts from the sale of circuit boards includes the trade in value of used circuit boards exchanged by the purchasers.

Whether petitioner was entitled to claim a deduction for the portion of its sale price of reconditioned circuit boards attributable to the labor to recondition them.

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Whether petitioner was negligent.

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the Department 30 days to respond to supporting documents submitted by petitioner at the hearing, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

Joe Singh Sandhu, 186293 (EH)

4-1-94 to 3-31-99, \$179,701.50 Tax, \$44,925.46 Penalty

For Petitioner:

Joe Sandhu, Taxpayer

Dennis N. Brager, Attorney

John O. Kent, Attorney

For Sales and Use Tax Department:

Tim Treichelt, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the audited understatement of taxable sales from the liquor store is excessive.

Whether the audited understatement of taxable sales from the restaurant is excessive.

Whether taxpayer committed fraud.

Whether relief from the finality penalty is warranted.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 2:58 p.m. and reconvened immediately in closed session with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss pending litigation (Govt. Code § 11126(e)), settlements (Rev. & Tax. Code, §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Govt. Code § 11126(a)).

The Board recessed at 3:45 p.m. and reconvened immediately in open session with Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

Tuesday, December 12, 2006

CHIEF COUNSEL MATTERS**Petition to Amend Regulation 2530, *Inventories***

Mr. Lambert, Acting Assistant Chief Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the petition to adopt a regulation to tax flavored malt beverages as distilled spirits and/or amend Alcoholic Beverage Tax Regulation 2530 (Exhibit 12.4).

Speakers: Elianna Yanger, representing Friday Night Live, Students Making a Community Change (SMACC) and the California Youth Council
James Dui, high school student, representing Friday Night Live, SMACC and the California Youth Council
Cindy Song, high school student, representing Friday Night Live, SMACC and the California Youth Council
Jimmy Jordan, high school student, representing Friday Night Live, SMACC and the California Youth Council
Fred Jones, representing California Counsel on Alcohol Problems
Marc Sorini, representing a coalition of flavored beer producing and distributing companies
John Janosko, Vice President and General Manager of Mesa Beverage Company
Beverly Swanson, President of the California Licensed Beverage Association and owner of a tavern in Santa Cruz, California
John Holtzman, Partner, Renne Sloan Holtzman and Sakai, representing Santa Clara County
Scott Dickey, Counsel, Renne Sloan Holtzman and Sakai, representing Santa Clara County

Action: Ms. Mandel moved to grant the petition and initiate the rulemaking process with the direction to staff to draft the regulatory proposed language for the public hearing consistent with the request in the petition. The motion was seconded by Ms. Yee, but failed to carry, Ms. Yee and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, Mr. Chiang absent. The Board deferred consideration of this matter to the next day.

SALES AND USE TAX APPEALS HEARING

Sierra Railroad Company, 287920, 288213 (JHF)

10-1-00 to 9-30-03, \$12,316.11 Tax

For Petitioner:

Michael Hart, Taxpayer
Lori Mersereau, Attorney
Torgny Nilsson, Representative
Cary Huxsoll, Tax Counsel

For Sales and Use Tax Department:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner/claimant has established that it reported and paid tax on the 15 percent mandatory service charge allocable to its taxable sales of meals as well as having overpaid tax on the remainder.

Tuesday, December 12, 2006

Whether petitioner's alleged reliance upon oral advice from the office of former Board Member Dean Andal regarding petitioner's method and amount of reporting warrants relief from the tax.

Action: Mr. Leonard moved that 35 percent of the ticket price be attributed to meals and the same ratio be used for the service charge. The motion was seconded by Mr. Parrish, but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Yee and Ms. Mandel voting no, Mr. Chiang absent.

Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the petition be submitted for decision.

SPECIAL TAXES APPEALS HEARING

Asher Shaitrit, 198549 (ET)

5-1-99 to 5-31-01, \$234,900.00 Tax

For Petitioner:

Frederick Phillips, Representative

For Property and Special Taxes Department:

Monica Brisbane, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has provided sufficient credible evidence to demonstrate that he did not purchase and distribute the unstamped cigarettes in dispute.

Whether petitioner was negligent.

Action: Upon motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board granted the petitioner's request for postponement to the February Culver City meeting.

PUBLIC HEARINGS

Proposed Amendments to Rule 462.040, *Change in Ownership - Joint Tenancies*

Carole Ruwart, Tax Counsel, Business Taxes Programs Division, Legal Department, made introductory remarks regarding the proposed amendments to Rule 462.040, *Change in Ownership – Joint Tenancies*. The amendments to Rule 462.040 clarify the requirements under article XIII A, section 2, of the California Constitution and sections 60 and 65 of the Revenue and Taxation Code for exclusion from change in ownership those transfers involving joint tenancies by eliminating the potential of obtaining "original transferor" status by transferring joint tenancy interests into trusts. (Exhibit 12.5)

Speakers:

Alice Kessler, representing Equality California

Linda Scaparotti, Attorney

Deb Kinney, Attorney

Thomas A. Anderson, Marin County homeowner

George Renkei, representing the Los Angeles County Assessor's office and the California Assessors' Association

Juliet Apfel, representing the Los Angeles County Assessor's office and the California Assessors' Association

Tuesday, December 12, 2006

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board referred the matter to the interested parties process.

Proposed Amendments to Regulations 45000 et seq., Cigarette and Tobacco Products Licensing Act of 2003

Mr. Lambert, Acting Assistant Chief Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the proposed amendments to Regulations 45000 et seq., Cigarette and Tobacco Products Licensing Act of 2003. Proposed Adoption of New Chapter 9.5, Cigarette and Tobacco Products Licensing Act of 2003, Regulations 45000 through 47030 to implement the Cigarette and Tobacco Products Licensing Act of 2003. (Bus. & Prof. Code, § 22970 et seq.) (Exhibit 12.6)

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Mr. Parrish, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang, absent, the Board adopted the proposed amendments as recommended by staff.

Timber Yield Tax Rate

Mr. Hayes, Chief, Research and Statistics Section, Legislative and Research Division, made introductory remarks regarding the yearly adjustment to the timber yield tax rate. Revenue and Taxation Code, section 38202 requires that the Board adjust the timber yield tax rate in December of each year to the nearest one-tenth of one percent for the next calendar year. The adjustment is to be in the same proportion as the change from the previous tax year to the present one of the average general property tax rate in the rate adjustment counties. (Exhibit 12.7)

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board adopted the 2007 timber yield tax rate of 2.9 percent as recommended by staff.

Timber Harvest and Timber Modified Harvest Values

Ms. Stuckey, Chief, County and Property Tax Division, Property and Special Taxes Department, made introductory remarks regarding the timber harvest and timber modified harvest values. On or before December 31, 2006, the Board shall estimate the immediate harvest values of and adopt schedules for timber harvested between January 1, 2007 and June 30, 2007. (Rev. & Tax. Code, § 38204) (Exhibit 12.8)

Speakers were invited to address the Board, but there were none.

Tuesday, December 12, 2006

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board approved the 2007 timber harvest and timber modified harvest values as recommended by staff.

CHIEF COUNSEL MATTERS

RULEMAKING

Regulation 1586, *Works of Art and Museum Pieces for Public Display*, Section 100 Changes

Action: Upon motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board approved section 100 changes to Regulation 1586 as recommended by staff (Exhibit 12.9).

Regulation 1591, *Medicines and Medical Devices*; Regulation 1591.2, *Wheelchairs, Crutches, Canes and Walkers*; Regulation 1591.4, *Medical Oxygen Delivery Systems*, Section 100 Changes

Action: Upon motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board approved section 100 changes to Regulations 1591, 1591.2 and 1591.4 as recommended by staff (Exhibit 12.10).

Proposed Amendments to Regulation 1660, *Leases of Tangible Personal Property-In General*, Section 100 Changes

Action: Upon motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board approved section 100 changes to Regulation 1660 as recommended by staff (Exhibit 12.11).

Proposed Amendments to Regulation 1703, *Interest and Penalties*, Section 100 Changes

Action: Upon motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board approved section 100 changes to Regulation 1703 as recommended by staff (Exhibit 12.12).

OTHER CHIEF COUNSEL MATTERS

Recent Federal Developments & Emergency Telephone Users (911) Surcharge Refund Requests

Randy Ferris, Tax Counsel, Legal Department, was available to answer questions regarding the Recent Federal Developments & Emergency Telephone Users (911) Surcharge Refund Requests (Exhibit 12.13).

Tuesday, December 12, 2006

The Board recessed at 6:00 p.m. and reconvened at 6:10 p.m. with Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

ADMINISTRATIVE SESSION

BOARD COMMITTEE REPORTS

Legislative Committee

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board approved the Legislative Committee report (Exhibit 12.14).

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD DECEMBER 12, 2006

Auto World, Inc., 285803 (KH)

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Binding Systems of California, Inc., 260936 (CH)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

SALES AND USE TAX APPEALS HEARING

Enterprise Rent-A-Car Company of Los Angeles, Inc., 329547 (AS)

4-1-01 to 3-31-04, \$164,071.63 Claim for Refund

For Claimant: Appearance Waived

For Sales and Use Tax Department: Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether claimant is entitled to a refund because it did not owe use tax measured by the purchase price of minivans it used to shuttle its customers.

Whether claimant is entitled to a refund of the use tax paid for its use of the subject minivans because its failure to report tax was the result of reasonable reliance on written advice from the Board in a prior audit.

Whether certain price reductions on rental agreements identified as "tax disputes" may be deducted from the measure of tax.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Tuesday, December 12, 2006

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD DECEMBER 12, 2006

Joe Singh Sandhu, 186293 (EH)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Sierra Railroad Company, 287920, 288213 (JHF)

Final Action: Ms. Mandel moved that the petition be redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, Mr. Chiang absent.

The Board deferred consideration of the matter to the next Sacramento meeting.

The Board adjourned at 6:20 p.m.

The foregoing minutes are adopted by the Board on March 20, 2007.

Note: The following cases were removed from the calendar prior to the meeting: *Nassco Holdings, Inc.*, 317434; and, *Parquette Industries, Inc.*, 283835.